An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0314
Sector:	Insurance
Product / Service:	Household Buildings
Conduct(s) complained of:	Rejection of claim
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is a Limited Company in the construction trade. The Complainant incepted, through its Broker, a Contract Works Insurance Policy with the Provider on 14 June 2005, which was renewed annually after that. This policy provides cover in respect of *"HOUSES IN COURSE OF CONSTRUCTION THROUGH TO COMPLETION"*. The policy period in which this complaint falls, is from 14 June 2009 to 12 June 2010.

The Complainant's Case

The Complainant was developing a housing estate in the West of Ireland. In and around 2 January 2010, a water pipe in the attic of one of the dwelling houses that the Complainant was working on burst due to frost, causing significant water damage. The Complainant submitted a claim to the Provider in the amount of €47,709.02, however the Provider declined this claim.

The Complainant submits, as follows:

> *"At the time* [the Complainant] *was taking out the insurance policy,* [it] *specifically asked* [its Broker] *whether houses No. 4 and No. 17 in the estate were insured under the policy as these two houses were near completion but had not yet sold.* [The Broker] *reverted to* [the Provider] *as the insurance company and their reply which*

> [the Complainant] *received was as per the note attached to the Renewal Notice* [dated 5 June 2009] *stating:*
>
> > *"IT IS NOTED AND AGREED THAT THIS TYPE OF POLICY COVERS HOUSES IN THE COURSE OF CONSTRUCTION ONLY.*
> >
> > *COVER UNDER THIS POLICY BECOMES NULL & VOID ONCE A HOUSE HAS BEEN COMPLETED FOR MORE THAN A THREE MONTH PERIOD. THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES."*
>
> *It was the understanding of* [the Complainant] *that in accordance with said reply that the house was insured as it was not signed off on by the engineer"*.

The Provider declined the claim under the *"cessation of work"* clause, which states *"the Company shall not be liable in respect of any loss of or damage to any contract site covered by this policy where work has ceased for a period exceeding 3 consecutive months, unless agreed by the company in writing"*, and also under the *"completed pending sale exception"*, which excludes cover for *"loss or damage to any part of the Property Insured after such property has been completed pending sale or leasing other than any private dwelling house completed pending sale for a period of 90 days from the date of its completion or until sold, whichever is the earlier"*.

The Complainant *"objects to the claim being declined and is able to provide the documentary proof of work being carried out on the property within the 90 days period"*.

As a result, the Complainant seeks for the Provider to admit its claim in the amount of €47,709.02.

The Complainant's complaint is that the Provider wrongly or unfairly declined its claim.

The Provider's Case

Provider records indicate that the Complainant, a Limited Company in the construction trade, incepted through its Broker a Contract Works Insurance Policy with the Provider on 14 June 2005. The policy is designed for builders, contractors and developers whose occupation involves the construction of houses and buildings and provides material damage cover for buildings in the course of construction. Provider records indicate that after the original inception date on 14 June 2005, the Complainant subsequently renewed the policy each year in 2006, 2007 and 2008.

During that time in Ireland, the construction industry and the property market as a whole experienced a sharp downturn. As a result, a number of what are commonly referred to as 'ghost estates' were becoming prevalent across the country. These construction sites were unfinished and could be left dormant for a considerable amount of time.

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For that reason, the Provider's exposure to risk was increased and it made the decision to add the following clause to the Contract Works Insurance Policy from August 2008:

> *"**Cessation of Work***
>
> *The Company shall not be liable in respect of any loss of or damage to any contract site covered by this policy where work has ceased for a period exceeding 3 consecutive months, unless agreed by the company in writing"*.

The Provider notes that the Complainant renewed his Contract Works Insurance Policy on 14 June 2009 and it was from this renewal date that the *"Cessation of Work"* clause was specifically added to his policy. The Provider states that it is satisfied that the *"Important Notes"* section of the Policy Renewal notification it issued to the Complainant on 10 June 2009 clearly advised on this additional policy wording as follows:

> "***Cessation of work***
>
> *The Company shall not be liable in respect of any loss of or damage to any site covered by this policy where work has ceased for a period exceeding 3 consecutive months, unless agreed by the Company in writing".*

The Provider notes that the Complainant's Broker also issued the Complainant with a renewal notice dated 5 June 2009 and added a supplementary note, as follows:

> *"IT IS NOTED AND AGREED THAT THIS TYPE OF POLICY COVERS HOUSES IN THE COURSE OF CONSTRUCTION ONLY. COVER UNDER THIS POLICY BECOMES NULL & VOID ONCE A HOUSE HAS BEEN COMPLETED FOR MORE THAN A THREE MONTH PERIOD. THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES."*

The Provider notes that this supplementary note was added by the Complainant's Broker and not by the Provider itself and that the contents of this supplementary note did not form part of the terms and conditions of the Complainant's Contract Works Insurance Policy. In this regard, the Provider notes that the third sentence, that is, *"The insurance companies identify unoccupancy from the date an engineer signs off for the final drawdown confirming completion of houses"*, was not correct and not a true representation of the actual policy terms and conditions.

In and around 2 January 2010, a water pipe in the attic of one of the dwelling houses that the Complainant had constructed burst due to frost, causing water damage that the Complainant's Loss Assessor calculated to be in the amount of €47,709.02. As this damage occurred during the 2009/2010 policy period, the Provider states that it is satisfied that the previously cited *"Cessation of Work"* clause applied, in addition to all other policy terms and conditions.

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During its investigation of the claim, the Complainant's Loss Assessor advised by email on 31 August 2010 that *"*[the Complainant] *advises that this house was complete to the stage it was at when the damage occurred before this policy was taken out.* [The Complainant] *cannot precisely recall what date this was but he contacted his Brokers and took out the current policy believing (as per the note he received from the Brokers) that it covered the affected property"*. The Provider is satisfied that based on that information, it was clear that the property was in this state of completion at the time of renewal in June 2009, that is, for at least 6 months prior to the escape of water in and around 2 January 2010.

In this regard, the Provider states that it is satisfied from the photographs of the property and the repairs estimate put forward, that the following works had been carried out:

- The roof was fully tiled with facia, soffit, downpipes and drains complete.
- The house was plastered and painted internally and externally.
- A fitted kitchen had been installed complete with door handles, kicker and gable boards and cornicing.
- The kitchen floor was tiled and grouted and tiled splash backs were in place which were fully grouted and edged.
- Ceilings were complete, painted and finished with light fittings.
- Electrical works were complete as is evident by the presence of plug sockets, light fittings externally and internally with switches, television points and kitchen appliance switches.
- Plumbing works were also complete as is evident by installation of radiators. The source of the leak was the plumbing system in the attic.
- Second fix carpentry was also complete; external and internal doors were hung with handles and locks complete; timber floors were laid with matching skirting boards and architrave installed and fully complete.
- The garden area was levelled off and external front boundary walls were built, plastered and painted.
- Attic insulation was also complete, which is evident from the claim submission.

Furthermore, the property was on the market for sale when the incident happened, which the Provider understands that due to market conditions at the time, was a slow process. In this regard, the Provider refers to screenshots dated June 2009 from Google Maps Street View that show the property to be completed and painted, with a 'For Sale' sign above the door. Whilst the Complainant's Contract Works Insurance Policy did extend to cover finished buildings that were completed pending sale, this was only for a maximum of 90 days from the date of completion or until the property was sold, whichever was sooner.

The Provider states that it declined the Complainant's claim in accordance with the terms and conditions of his Contract Works Insurance Policy.

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In this regard, the Provider notes that the *"Cessation of Work"* clause added to the Complainant's policy at its renewal in June 2009 provides, as follows:

> *"The Company shall not be liable in respect of any loss of or damage to any contract site covered by this policy where work has ceased for a period exceeding 3 consecutive months, unless agreed by the company in writing"*.

In addition, the Provider also declined the Complainant's claim as the 'General Exceptions' section of the applicable Contract Works policy document provides, among other things, at pg. 3, as follows:

> *"The Company shall not be liable in respect of: …*
>
> ***COMPLETED PENDING SALE***
>
> *2. loss of or damage to any part of the Property Insured after such property has been completed pending sale or leasing other than any private dwelling house completed pending sale for a period of 90 days from the date of its completion or until sold, whichever is earlier.*
>
> ***COMPLETED TAKEN INTO USE AND MAINTENANCE***
>
> *3. loss of or damage to any part of the permanent works …*
>
> *(b) after such part has been taken into use by the owner, tenant or occupier".*

The Provider notes that the Complainant's Loss Assessor advised its Loss Adjuster by email on 1 March 2010, as follows:

> *"I wish to advise that the damaged property was awaiting a certification of completion from an engineer as was the normal procedure for the Insured at the site …*
>
> [The Complainant] *specifically raised the issue of insurance with his Brokers and he was advised in writing that the properties remained on cover…until they were certified complete by an engineer prior to sale"*.

In this regard, the Provider was advised by its Loss Adjustor in its Preliminary Report dated 9 April 2010, as follows:

> *"The Insured confirms that the property was awaiting a certificate of completion from an engineer. The Insured advises that this was normal practice at the site. The property was as mentioned unoccupied and unsold …*
>
> *The Insured advises that a certificate of completion is not issued until after the property is sold".*

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Given the fact that the house was on the market for sale, the Provider needed to establish when the work on the property had actually ceased as this date of completion was of particular relevance given the specific policy conditions and clauses that applied.

As a result, the Provider's Loss Adjuster wrote to the Complainant's Loss Assessor on 5 May 2010, as follows:

> *"*[The Provider's] *Underwriters view is that the loss is not covered as the dwellinghouse was completed and taken into use by the owner, in this case the Insured, who had the house on the market for sale.*
>
> *They have raised one issue and that is on what date was the house completed and can this date be substantiated"*.

In this regard, in its correspondence dated 16 June 2010 the Loss Assessor responded, as follows:

> *"I have spoken to the Insured at length regarding the matter and I now enclose a copy of correspondence which* [the Complainant] *received from his Brokers at renewal in June 2009. This document was issued to* [the Complainant] *in response to his request from the Brokers for clarification regarding cover for the properties at the risk address.*
>
> *I can confirm that the damaged property was not signed off by any engineer"*.

Enclosed was a copy of the supplementary note that had been sent to the Complainant by its Broker on 5 June 2009.

As this response was not adequate to progress the claim, the Loss Adjuster again requested the date of completion and the Assessor replied by email on 31 August 2010, as follows:

> *"I confirm that* [the Complainant] *advises that this house was complete to the stage it was at when the damage occurred before this policy was taken out.* [The Complainant] *cannot precisely recall what date this was but he contacted his Brokers and took out the current policy believing (as per the note he received from the Brokers) that it covered the affected property"*.

Based on the information received, the Provider considers that it was clear that there was an issue with cover and that the claim could not advance.

Following later discussions between the Loss Assessor and the Loss Adjustor, the Provider was advised in March 2011 that the Complainant was no longer pursuing the claim under his policy and it closed its file accordingly. The Provider understood at that time that the Complainant intended to pursue the matter with his Broker directly.

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However, the Provider next received an email from its Loss Adjustor on 22 March 2012, as follows:

> *"Today we spoke with* [the Complainant's] *assessor who has confirmed that he will have to speak to* [the Complainant's] *solicitors before he replies to the question regarding sign off documentation in relation to the premises. He has confirmed that he will revert as soon as possible"*.

The matter was then subsequently on hold for some time and the Provider later closed its file again in December 2012 as no documentary evidence to validate the claim was ever supplied.

The file then remained closed until the Provider received a formal complaint by way of the Complainant's solicitor in July 2015. Having reviewed the file in full again, the Provider remained satisfied from the information that had been supplied previously, that is, that the house was in the same condition when the incident occurred as it was when the policy was renewed, and from the photographic evidence before it, that all major construction had been completed. However, the Provider was still willing to accept evidence to substantiate the claim and in its Final Response Letter dated 28 September 2015 advised the Complainant's solicitor, as follows:

> *"We are willing to review any further information that can be provided in relation to this claim, in particular we would welcome sight of documentation/certification confirming when property in question was first connected to the electricity supply"*.

The Provider received no response to this request.

The Provider notes that the damage to the Complainant's property was inspected by its Loss Adjustor but as there appeared to be an issue with indemnity from the outset, no costs were agreed. In this regard, whilst the Complainant's Assessor submitted an itemised bill of works totalling €47,709.02, the Provider notes that there are a number of items totalling €19,585.52 that would not have been included in any settlement under the policy in any event, such as the loss of rent, assessors fees, overhead and profits, professional fees and VAT. As a result, for the actual damage to the building itself, a total of €28,123.50 had been put forward by the Loss Assessor for the repairs cost. The Provider notes that this figure was estimated and no actual agreement was ever made with regards to the costs involved as it could not verify the validity of the claim.

The Provider notes that the Complainant's policy was purchased through its Broker. The Provider was not present at the time of sale or renewal so it cannot comment on what advice was offered to the Complainant about the suitability of the policy for his needs. The Provider's role was to administer the policy in line with the specified terms and conditions as set out in the policy documents.

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In this regard, the Provider did not agree to the terms that were implied by the supplementary note sent by the Broker to the Complainant at renewal dated 5 June 2009, which stated, *"The insurance companies identify unoccupancy from the date an engineer signs off for the final drawdown confirming completion of houses"*.

This information was not correct and not a true representation of the actual policy terms and conditions. In this regard, the Provider considers that the contents of this supplementary note is a matter between the Complainant and its Broker, as it was the Broker who wrote and sent this supplementary note to the Complainant.

The Provider is satisfied that based on the information made available to it that it declined the Complainant's claim in accordance with the terms and conditions of its Contract Works Insurance Policy.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 21 August 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The complaint at hand is, in essence, that the Provider wrongly or unfairly declined the Complainant's claim.

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The Complainant is a Limited Company in the construction trade. The Complainant incepted through its Broker a Contract Works Insurance Policy with the Provider on 14 June 2005, which was renewed annually after that. This policy provides cover in respect of *"HOUSES IN COURSE OF CONSTRUCTION THROUGH TO COMPLETION"*. The policy period in which this complaint falls, is from 14 June 2009 to 12 June 2010.

The Complainant was developing a housing estate. In and around 2 January 2010, a water pipe in the attic of one of the dwelling houses in that housing estate burst due to frost, causing significant water damage. The Complainant submitted a claim to the Provider in the amount of €47,709.02, however the Provider declined this claim. Separately the Provider queried the value of the loss.

The Complainant submits, as follows:

> *"At the time* [the Complainant] *was taking out the insurance policy,* [it] *specifically asked* [its Broker] *whether houses No. 4 and No. 17 in the estate were insured under the policy as these two houses were near completion but had not yet sold.* [The Broker] *reverted to* [the Provider] *as the insurance company and their reply which* [the Complainant] *received was as per the note attached to the Renewal Notice* [dated 5 June 2009] *stating:*
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> > *"IT IS NOTED AND AGREED THAT THIS TYPE OF POLICY COVERS HOUSES IN THE COURSE OF CONSTRUCTION ONLY. COVER UNDER THIS POLICY BECOMES NULL & VOID ONCE A HOUSE HAS BEEN COMPLETED FOR MORE THAN A THREE MONTH PERIOD. THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES."*
>
> *It was the understanding of* [the Complainant] *that in accordance with said reply that the house was insured as it was not signed off on by the engineer"*.

The Contract Works Insurance Policy, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that the 'General Exceptions' section of the applicable Contract Works policy document provides, among other things, at pg. 3, as follows:

> *"The Company shall not be liable in respect of: …*
>
> ***COMPLETED PENDING SALE***
>
> *2. loss of or damage to any part of the Property Insured after such property has been completed pending sale or leasing other than any private dwelling house completed pending sale for a period of 90 days from the date of its completion or until sold, whichever is earlier.*

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COMPLETED TAKEN INTO USE AND MAINTENANCE

3. loss of or damage to any part of the permanent works …

(b) after such part has been taken into use by the owner, tenant or occupier".

In its renewal notice to the Complainant dated 10 June 2009 the Provider gave notice to the Complainant that it had added the *"Cessation of Work"* clause added to the Contract Works Insurance Policy wording, as follows:

> *"Additional Policy Wording*
> ***Cessation of Work***
>
> *The Company shall not be liable in respect of any loss of or damage to any contract site covered by this policy where work has ceased for a period exceeding 3 consecutive months, unless agreed by the company in writing"*.

I accept that the terms and conditions of the contract of insurance between the Provider and the Complainant are limited to those set out in the applicable Contract Works policy documentation. In this regard, I accept the Provider's position that the contents of the supplementary note provided to the Complainant by its own Broker in correspondence dated 5 June 2009 did not form part of the terms and conditions of the contract of insurance between the Provider and the Complainant.

The inclusion of this supplementary information by the Broker is a matter for the Broker to answer. It does not form part of this investigation.

Having considered the documentary and photographic evidence before me, which includes the email from the Complainant's Loss Assessor dated 31 August 2010 which states *"I confirm that* [the Complainant] *advises that this house was complete to the stage it was at when the damage occurred before this policy was taken out* [on 14 June 2009]*"*, I accept that it was reasonable for the Provider to conclude that the Complainant's property that suffered the loss in and around 2 January 2010 was in a state of completion by 14 June 2009, that is, for a period in excess of 90 days (3 months).

While the Complainant has stated that he *"objects to the claim being declined and is able to provide the documentary proof of work being carried out on the property within the 90 days period"*, I note that there is no such documentary evidence before me. This is despite repeated requests by the Provider for such supporting documentation. In this regard, I accept that the onus rested on the Complainant as the policyholder to provide such evidence to the Provider in support of his claim and I note that the Provider afforded the Complainant several opportunities to do so.

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As a result, I accept that the Provider was entitled to decline the Complainant's claim in accordance with the terms and conditions of its Contract Works Insurance Policy.

For the reasons outlined above, I do not uphold this complaint.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

23 September 2019

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address, and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.